

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Alfred Footman,)	C/A No.: 1:11-166-JMC-SVH
)	
Petitioner,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
ML Rivera, Warden,)	
)	
Respondent.)	
)	

Petitioner, proceeding pro se, filed this action for habeas corpus relief January 21, 2011. Before the court is Respondent's Motion to Dismiss/Motion for Summary Judgment filed April 26, 2011. [Entry #21]. All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d) (D.S.C.). Because this is a dispositive motion, this report and recommendation is entered for review by the district judge.

As Petitioner is proceeding pro se, the court entered an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), on April 27, 2011, advising him of the importance of a motion to dismiss and of the need for him to file an adequate response. [Entry #23]. Notwithstanding the specific warning and instructions set forth in the court's *Roseboro* order, Petitioner failed to respond to the motion. By order dated June 7, 2011, the court then ordered Petitioner to advise the court as to whether he wishes to continue with this case and to file a response to Respondent's motion to dismiss by June 21, 2011. [Entry #27]. The court further advised Petitioner that if he failed to respond, this action will be recommended for dismissal with prejudice for failure to prosecute. The June 7,

2011 order was returned to the Clerk of Court's office via United States Postal Service on June 16, 2011, marked "Return to Sender." [Entry #30]. Petitioner was previously directed by order of this court to keep the court apprised of any change in address:

You are ordered to always keep the Clerk of Court advised **in writing (Post Office Box 2317, Florence, South Carolina 29503)** if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this court, **your case may be dismissed for violating this order**. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address and providing the court with the docket number of all pending cases you have filed with this court. Your failure to do so will not be excused by the court.

Put this order with your own record of this case so that you will not overlook your duty.

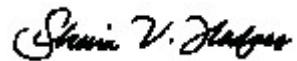
If your address changes in the future, you must provide the court with your *own* new address.

[Entry #12] (emphasis in original). Petitioner has failed to comply with this order, and as a result, neither the court nor the Respondent has any means of contacting him concerning his case. No response has been filed by Petitioner to Respondent's motion to dismiss/for summary judgment.

Based on the foregoing, and the previous instructions and specific warning given to Petitioner in the court's prior orders, it is recommended that this action be dismissed with prejudice, in accordance with Fed. R. Civ. P. 41(b). The Clerk is directed to send this Report and Recommendation to Petitioner at his last known address.

If Petitioner notifies the court within the time set for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to vacate this Report and Recommendation and return this file to the undersigned for further handling. If, however, no objections are filed, the Clerk shall forward this Report and Recommendation to the district judge for disposition.

IT IS SO RECOMMENDED.



June 20, 2011
Florence, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**